



Kosovo Property Claims Commission
Komisioni i Kërkesave Pronësore të Kosovës
Komisija Kosovske Agencije za Imovinu

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DECISION

PANEL NO: 1

DECISION NO.: KPCC/D/A/171/2012
DECISION DATE: 24/10/2012

Commissioners Heiskanen (Chairperson),
Vokshi and Wühler

ORDER

(1) In each of the 14 (fourteen) claims identified in parts A and B of the attached Schedule, the Commission

decides that

The claimant or the property right holder, as the case may be, has established ownership over the claimed property, or such part thereof as specified in the respective individual decision;

(2) In each of the 14 (fourteen) claims referred to in paragraph (1) above, except for Claim Nos. 15128, 30580, 34497 and 44424, the Commission

orders that

(a) The claimant or the property right holder, as the case may be, be given possession of the claimed property;

(b) The respondent and any other person unlawfully occupying the property vacate the same within 30 (thirty) days of the delivery of this order; and

(c) Should the respondent or any other person unlawfully occupying the property fail to comply with the order to vacate within the time stated, they be evicted from the property.

(3) In each of the claims identified in the relevant columns in parts A and B of the attached Schedule, the Commission additionally decides that the claims be dismissed insofar as the claimants seek compensation for physical damage to, or for loss of use of, the claimed property; and

(4) In cases in which there is more than one owner, the above decisions and orders do not affect the rights of any respective co-owners.

LEGAL FRAMEWORK

1. On 13 June 2008, Law No. 03/L-079 adopting and amending UNMIK Regulation 2006/50 (“UNMIK/REG/2006/50”) on the resolution of claims relating to private immovable property, including agricultural and commercial property entered into force in Kosovo. The Law included an annex (“Annex I”) adopting and amending UNMIK Administrative Direction No. 2007/5 (“UNMIK/ADM/DIR/2007/5”), which implements UNMIK/REG/2006/50. Law No. 03/L-079 and Annex I established the Kosovo Property Agency (“KPA”) as an independent agency and amended certain provisions of UNMIK/REG/2006/50 and UNMIK/ADM/DIR/2007/5 as necessary to effect the change in the applicable legal framework. In accordance with their terms, Law No. 03/L-079 and Annex I entered into force upon their publication in the Official Gazette.

2. Pursuant to section 22 of UNMIK/REG/2006/50 the Regulation ceased to be in force after 31 December 2008. Accordingly, Law No. 03/L-079 is presently the sole source of the Commission’s statutory authority. The provisions of UNMIK/REG/2006/50 remain relevant to the extent that they have been incorporated by reference to Law No. 03/L-079.

REASONS FOR THE DECISION

3. A claimant is entitled to an order from the Commission for repossession of the property, if the claimant proves:

- (a) ownership of private immovable property, including agricultural and commercial property; or
- (b) a use right in respect of private immovable property, including agricultural and commercial property,

where the claimant or the property right holder, as the case may be, is not now able to exercise such property rights, and where the claim involves circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999. (See section 3.1 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.)

4. Where the claimant makes an ownership claim pursuant to section 3.1(a) of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission must resolve the issue of ownership and, if ownership is proven to the satisfaction of the Commission and the claimant does not indicate otherwise, make an order for repossession in favour of the claimant or the property right holder, as the case may be. Where the claimant makes a claim for a property use right pursuant to section 3.1(b) of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, the Commission may consider the claim in a summary procedure and make an order for recovery of possession. (See section 3.1 of UNMIK/REG/2006/50 read together with section 9 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079.)¹

¹There appears to be a technical error in Annex I. While Annex I clearly appears to be intended to replace UNMIK/ADM/DIR/2007/5 in its entirety, including its all three annexes, Article 26 of Annex I provides that the title of Annex III of UNMIK/ADM/DIR/2007/5 shall be replaced by a title referring to Annex II. However, there is neither specific provision nor any other indication in Law 03/L-079 or its Annexes that the intention of this particular amendment was to delete Annex I or Annex II of UNMIK/ADM/DIR/2007/5. Accordingly the

5. The Commission held its thirty-first session from 22 to 24 October 2012 in Prishtinë/Pristina. A total of 753 agricultural property claims were submitted by the Executive Secretariat of the KPA (the "Executive Secretariat") to the Commission at its thirty-first session, together with supporting documentation, claims processing reports, verification reports, and other relevant information. Two agricultural property claims which had been presented to the Commission were referred by the Commission back to the Executive Secretariat during the session, and six claims were withdrawn by the Executive Secretariat during the session. The Commission suspended the consideration of one agriculture property claim pending the holding of an oral hearing. In addition, the Commission resolved four claims which had previously been suspended pending the holding of an oral hearing. In sum, a total of 748 agricultural property claims were resolved by the Commission during the session.

6. At the Commission's session, the Executive Secretariat presented the claims to the Commission and reported on the processing of and the legal and evidentiary issues raised by the claims. At the Commission's request, the Executive Secretariat provided additional information and explanations, as required.

A. Claims covered by the present decision

7. In all of the claims covered by the present decision the claimants seek the resolution of an ownership claim, and all of them relate to agricultural properties, including agricultural land, pasture and forests.

8. The present decision applies to the fourteen claims identified in the attached Schedule. Of these fourteen claims, Claim Nos. 15128, 30580, 45218 and 45222 were subject of an earlier Commission decision.² However the earlier decisions in these claims were overturned by the Commission on account of an incorrect notification of the claimed property during claims processing by the Executive Secretariat or on account of other processing errors by the Executive Secretariat which were identified after the decision had been taken. These claims consequently stand to be re-determined following correct notification of the claimed properties. The Executive Secretariat has written to the claimants advising them of the notification error and informing them that the claims will be re-determined following correct notification of the claimed property. The claimants, as well as the relevant cadastral authority have been advised that the previous Commission decisions are invalid and cannot be used for the purposes of any legal transaction. The remaining 734 claims for agricultural property dealt with by the Commission during the session are covered by two other decisions, namely decision KPCC/D/A/170/2012 and decision KPCC/D/A/172/2012.

9. All fourteen claims covered by the present decision are contested in the sense that the party or parties occupying the claimed properties, or a party that has expressed a legal interest in such properties (the "Respondent"), has contested the validity of the claim within the 30-day period prescribed in section 10.2 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079, or at a later stage during the proceedings, pursuant to section 10.3 of UNMIK/REG/2006/50 as adopted by Law No. 03/L-079.

Commission considers that all three Annexes of UNMIK/ADM/DIR/2007/5 are included in the legislative package and will be referred to by the Commission in this decision as Sub-Annexes I, II and III, respectively.

² Claim No. 15128 was decided by KPCC/D/A/29/2008 dated 19 December 2008, Claim No. 30580 was decided by KPCC/D/A/13/2008 dated 13 April 2008, Claim No. 45218 was decided by KPCC/D/A/36/2009 dated 23 April 2009, Claim No. 45222 was decided by KPCC/D/A/42/2009 dated 11 June 2009.

10. In order to satisfy the requirements for a valid claim, the claimant or the property right holder, as the case may be, must show that he or she had an ownership right in respect of the claimed property, and that he or she is not now able to exercise his or her property right due to the circumstances directly relating to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

1. *Contested claims – simple defence*

11. In the three claims identified in part A of the attached Schedule, the party occupying the claimed property, or a party that has expressed a legal interest in such property (the “Respondent”), has either not submitted any legally valid defence in response to the claim or has merely claimed to have the claimant’s permission to use the property, without providing any evidence in support of the allegation. In the absence of any valid defence on the part of the respondents, the Commission finds that the claims stand to be granted.

a. *Claim No. 24189*

12. In Claim No. 24189, the claim was originally filed by the Claimant in her capacity as a family household member of the alleged property right holder, namely her deceased mother, Cvija Dutina. However, in 2008, after the filing of the claim, the claimed property was transferred to Dragana Filipovic, the niece of Cvija Dutina, on the basis of an inheritance decision. Subsequently, Dragana Filipovic conferred the Claimant with a power of attorney to process the claim before the KPA in her name as the rightful property right holder.

13. In support of the claim, the Claimant has submitted the inheritance decision from 2008 according to which Dragana Filipovic inherited the claimed property. The ownership of Dragana Filipovic is also confirmed by the certificate of immoveable property rights from 2012, which has been located *ex officio* by the Executive Secretariat.

14. The Respondent, who currently occupies the claimed property, claims to have a legal right over the property, however, he has failed to produce any evidence in support of his allegation.

15. Based on the evidence before it, and in absence of any valid defense by the Respondent, the Commission finds that the claim stands to be granted in the name of Dragana Filipovic.

b. *Claim No. 29072*

16. Claim No. 29072 has been filed by the Claimant in her capacity as a family household member of the property right holder, namely her deceased grandfather. In support of her claim, the Claimant has submitted a possession list from 2001 which shows the alleged property right holder as owner of the claimed property. The possession list has been verified as being genuine by the Executive Secretariat.

17. The Respondents allege that they have been using the claimed property since 1996 based on a permission of the Claimant’s family to cultivate the land. However, the Respondents have not submitted any evidence to support their allegation.

18. Based on the evidence before it, and in absence of any valid defense by the Respondents, the Commission finds that the claim stands to be granted.

c. Claims Nos. 30580 and 44424

19. Claim Nos. 30580 and 44424 have been filed by the Claimants, two brothers, for the same property in their capacity as family household members of the property right holder, namely their deceased father. They seek confirmation of co-ownership over the claimed property, namely parcel No. 237. Initially, the Claimants filed the claim for parcel No. 544 instead of parcel No. 237, but subsequently explained that the two parcels have been subject to an informal exchange contract in 1993 between their father, as the original owner of parcel No. 544, and a third party Zeqir Ooti, as the original owner of parcel No. 237. Based on the exchange contract, the Claimant's father became owner of parcel No. 237. In support of their allegation, the Claimants submitted the informal exchange contract from 1993. When contacted by the Executive Secretariat, the third party Zeqir Ooti confirmed that the exchange took place in 1993.

20. When the initially claimed parcel No. 544 was notified, the Respondent claimed legal rights over this parcel, stating that he had purchased the claimed property from a third party Zeqir Ooti. However, no legal rights have been claimed by the Respondent in respect of parcel No. 237.

21. Based on the evidence before it, the Commission is satisfied that the Claimants' deceased father is the property right holder over the claimed parcel No. 237. Consequently Claim Nos. 30580 and 44424 stand to be granted.

2. Contested claims – other

22. In the eleven claims identified in part B of the attached Schedule, the party or parties occupying the claimed properties, or a party that has expressed a legal interest in such properties (the "Respondent"), has contested the validity of the claim, however, the Commission has reached the conclusion that the claims stand to be granted for the reasons set out below.

a. Claim No. 00744

23. Claim No. 00744 has been filed by the Claimant in her capacity as a family member of the property right holder of the claimed property, namely her father. In support of the claim, the Claimant submitted various types of documents including a certificate of immovable property rights from 2008. This certificate, which has been verified as being genuine by the Executive Secretariat, lists the property right holder as the owner of the claimed property.

24. The Respondent, who currently occupies the claimed property, claims that his family has purchased it from a third party in the late 1980s. However, the Respondent has failed to submit any evidence to support his allegations.

25. Based on the evidence before it, and in absence of any valid defense by the Respondent, the Commission finds that the claim stands to be granted.

b. Claim No. 15128

26. Claim No. 15128 has been filed by the Claimant in her capacity as property right holder. The Claimant seeks confirmation of her co-ownership over the claimed property and repossession. In support of her claim, the Claimant submitted numerous documents including an inheritance decision from 1996 and a possession list from 1997, both listing the

Claimant as co-owner of the claimed property. Both documents have been verified as being genuine by the Executive Secretariat.

27. The Respondent, who is the Claimant's brother-in-law and co-owner of the claimed property according to the possession list from 1997, claims to be the sole owner of the claimed property. However, he did not substantiate his allegations with any evidence.

28. Based on the evidence before it, and in absence of any valid defense by the Respondent, the Commission finds that the claim stands to be granted.

c. Claim No 33737

29. Claim No. 33737 has been filed by the Claimant (the "First Claimant") in her capacity as family household member of the property right holder, namely her deceased father. The First Claimant seeks confirmation of her father's sole ownership over the claimed property. In the related Claim No. 29158, the cousin of the First Claimant (the "Second Claimant") also claimed sole ownership over the same property.

30. The First Claimant submitted in support of her claim *inter alia* a court settlement from 1997 between the alleged property right holder and the Second Claimant. According to the document, an agreement was reached on the sole ownership of the alleged property right holder, the deceased father of the First Claimant, over the claimed property in accordance with a prior physical division of the property. The settlement agreement has been verified as being genuine by the Executive Secretariat.

31. The Executive Secretariat has *ex officio* located an inheritance decision from 1995 according to which the alleged property right holder inherited the claimed property as co-owner together with the Second Claimant.

32. Based on the evidence before it, the Commission is satisfied that the First Claimant has established her father's sole ownership over the claimed property. Consequently, the claim stands to be granted in his name.

d. Claim No. 34497

33. Claim No. 34497 has been submitted by the Claimant in her capacity as a family household member of the property right holder, namely her deceased father. The Claimant submitted a possession list from 2010 in the name of the alleged property right holder. Furthermore, the Claimant submitted a death certificate according to which the property right holder passed away in 1980. Both documents have been verified as being genuine by the Executive Secretariat. The Claimant claims that her brothers Martin and Nikola sold the claimed property without her and her sister's knowledge. She requests the KPA to mediate between her and her brothers while acknowledging that no inheritance procedure has been commenced.

34. The Respondent asserts that he purchased the property in 2001. In support of his assertion, the Respondent submitted a purchase contract from 2001 concluded between a third party, Ilmi Rrahmani, in the capacity of seller on behalf of the property right holder and allegedly authorized by him, and the Respondent in the capacity of buyer. The Executive Secretariat has verified the purchase contract to be genuine. On the basis of this purchase contract, the cadastral records were updated in the name of the Respondent as evidenced by the certificate of immovable property rights from 2012. The Respondent also submitted a power of attorney of 2001 allegedly authorizing Ilmi Rrahmani to sell the claimed property

and sign the purchase contract. The power of attorney has been certified with notary's stamp in the Former Yugoslav Republic of Macedonia, but its authenticity could not be verified by the Executive Secretariat.

35. The Claimant alleges that the power of attorney presented by the Respondent has been forged by her brothers against whom she has filed a claim with the competent court. The Respondent did not cooperate further in elucidating the exact circumstances of the transaction.

36. The Commission concludes that it cannot rely on the power of attorney presented by the Respondent. The power of attorney was allegedly issued by the property right holder in 2001, however, the Commission notes that the latter had died already in 1980. Consequently, Ilmi Rrahmani had no authority to sell the claimed property and the Respondent could not acquire ownership over the property through a contract based on an invalid authorization.

37. In light of the evidence before it, the Commission finds that the claim stands to be granted in the name of the property right holder.

e. Claim Nos. 45218, 45220, 45221 and 45222

38. Claim Nos. 45218, 45220, 45221 and 45222 have been filed by the Claimant in his capacity as property right holder. The Claimant seeks confirmation of his co-ownership and repossession over the claimed properties. In support of the claims, the Claimant has submitted *inter alia* a positively verified inheritance decision from 1985, according to which the Claimant inherited the claimed properties in co-ownership from his grandfather.

39. The Respondent challenges the claim asserting that the claimed properties are in co-ownership of four third parties as well as the Respondent himself based on uninterrupted possession for more than 40 years stating that his family has built a residential house on the claimed property after the grandfather of the Claimant allegedly transferred parts of the land to the Respondent's family. However, the Respondent failed to submit any evidence to support these allegations.

40. Based on the evidence before it, the Commission is satisfied that the Claimant has proven his co-ownership over the claimed properties. Consequently, the claims stand to be granted.

f. Claim Nos. 48148 and 48149

41. Claim Nos. 48148 and 48149 have been filed by the Claimant in his capacity as property right holder. In support of the claims, the Claimant submitted a certificate of immovable property rights from 2008, listing him as the owner of the claimed properties. This certificate has been verified as being genuine by the Executive Secretariat.

42. The Respondent, who was the Claimant's neighbor prior to the conflict and who is currently occupying the claimed properties, alleges that he has purchased the claimed properties from the Claimant prior to the conflict. However, he failed to substantiate his allegations with any evidence.

43. Based on the evidence before it, and in the absence of a valid defense by the Respondent, the Commission is satisfied that the Claimant has proven that he is the owner of the claimed properties. Consequently, the claims stand to be granted.

44. In view of the foregoing, the Commission is satisfied, based on the evidence before it, that in the claims identified in parts A and B of the attached Schedule:

- (a) the claimant or the property right holder, as the case may be, had an ownership right in respect of the claimed property, or such part thereof as specified in the respective individual decision;
- (b) the claimant or the property right holder, as the case may be, in each case is not now able to exercise his or her ownership right; and
- (c) the claim in each case involves circumstances directly related to or resulting from the armed conflict that occurred in Kosovo between 27 February 1998 and 20 June 1999.

45. Accordingly, since the Claimants in each of the claims identified in parts A and B of the attached Schedule have proven their ownership right over the claimed property, and in the absence of any valid defence on the part of the Respondents, all of these claims stand to be granted.

46. In Claim Nos. 15128, 30580 and 44424, referred to in the respective column in the attached Schedule, the current occupant of the claimed property is *prima facie* a lawful co-owner of the claimed properties. In Claim No. 34497, the Claimant states that she does not seek repossession. In these circumstances, an order confirming the property right in favour of the Claimant or the property right holder, as the case may be, stands to be granted without an eviction order or any other form of ancillary relief as set out above.

3. *Compensation claims*

47. The Commission notes that in some of the claims covered by the present decision the claimants seek compensation for damage to, or loss of use of, the claimed properties. Under UNMIK/REG/2006/50 as adopted by Law No. 03/L-079 the Commission has no jurisdiction over compensation claims. Accordingly these claims must be dismissed.

B. *Concluding remarks*

48. The Commission's decision and order also apply, where appropriate, to any associated property, *i.e.* any buildings or other constructions owned or used by the claimant or the property right holder, as the case may be, which form a unit with the claimed property.

49. Section 8.8 of Annex III of UNMIK/ADM/DIR/2007/5 as adopted by Law No. 03/L-079 allow the Chairperson of the Commission to sign a cover decision approving all individual claims identified in the cover decision, if the number of claims decided in a session is high. The Commission considers that this is appropriate in the present case.

50. The Commission's decision is without prejudice to the right of the claimants or the property right holders, as the case may be, to seek confirmation of their property right over the claimed properties before the competent local authorities, such as the cadastral authorities or local courts, in accordance with the applicable law.



Chairperson

APPEALS

UNMIK/REG/2006/50 and the Law No. 03/L-79 provide that:

12.1 Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision.

12.3 The appeal may be filed on the grounds that:

- (a) The decision involves a fundamental error or serious misapplication of the applicable material or procedural law; or
- (b) The decision rests upon an erroneous or incomplete determination of the facts.

The Supreme Court of Kosovo may levy court fees for the appeal procedures.

Information on the appeals procedures is contained in the separate Appeals Information Sheet provided to parties with this decision.

*** The English version is the official of all Property Claims Commission decisions. In case of conflict between the English language version and the Albanian or Serbian language version, then the meaning in the English language shall prevail.**

Spreadsheet /Lista /Prilog
Part A/Pjesa A/Deo A

KPA24189
KPA29072

Spreadsheet /Lista /Prilog
Part B/Pjesa B/Deo B

KPA15128 REP	KPA30580 REP	KPA33737	KPA34497	KPA44424	KPA48148	KPA48149
KPA00744	KPA45218	KPA45220	KPA45221	KPA45222		